



**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

IN THE MATTER OF THE PETITION	)	WATER AND WASTEWATER
OF ROLLING HILLS CONDOMINIUM	)	
ASSOCIATION VS. ANDOVER NURSING	)	ORDER ADOPTING INITIAL
HOME WASTEWATER TREATMENT	)	DECISION/SETTLEMENT AND
PLANT, ET AL. FOR THE ESTABLISHMENT	)	APPROVING INITIAL RATES
OF AN INITIAL TARIFF RATE	)	

BPU DOCKET NO. WC94080364  
OAL DOCKET NO. PUC 9363-94N

(SERVICE LIST ATTACHED)

**BY THE BOARD:**

On August 19, 1994, Petitioner, Rolling Hills Condominium Association (Rolling Hills), filed a petition against Andover Nursing Home Wastewater Treatment Plant (Andover) and Andover Nursing Home, Inc. n/k/a Andover Subacute & Rehabilitation Center One (Subacute One); Jeryl Industries, Inc. (Jeryl); Jeryl and Bondover, Inc. (Bondover), a joint venture t/a Rolling Hills Associates (RHA); and Jerry Turco (collectively, Respondents), the entities/individuals, which Rolling Hills believed were operating a sewer plant without authority from the Board of Public Utilities (Board). The matter was subsequently transmitted to the Office of Administrative Law (OAL) as a contested case, where it was assigned to Administrative Law Judge (ALJ) Diana C. Sukovich. The Division of the Ratepayer Advocate (RPA) participated in the proceeding. This Order addresses a stipulation (stipulation or settlement) setting the initial contract rate for Rolling Hills and the initial contract rates for Subacute One and Andover Intermediate Care Facility n/k/a Andover Subacute and Rehabilitation Center Two (Subacute Two). The initial contract rates for Subacute One and Subacute Two were not in dispute and therefore are not contested issues in this matter.

**BACKGROUND**

Andover is a wastewater utility located in the Township of Andover, Sussex County, New Jersey, providing wastewater service to three customers: (1) Subacute One; (2) Subacute Two; and (3) Rolling Hills (collectively, Customers). Rolling Hills consists of 258 condominium units.

Rolling Hills filed the petition because it stated that Andover increased the rate for sewer service without seeking Board approval. From April 1988 until April 1989, Andover charged Rolling Hills \$3,000 monthly to provide sewer service to its 258 units. This amounted to an \$11.62 per unit per month charge. In 1989, Andover increased the monthly rate to \$3,168 or \$12.28 per unit per month. In August 1993, Andover sent Rolling Hills a statement indicating the new monthly sewer rate would be \$12,900 or \$50 per unit per month, effective retroactive to March 1, 1993. Andover bills Rolling Hills on a monthly basis. Rolling Hills alleged that the rates were unfair and unreasonable and that since Andover had neither sought, nor obtained, approval from the Board to charge any fees for sewer service, it was doing so illegally.

Based on a November 15, 1996 ruling by ALJ Sukovich, in which the issue of the Board's jurisdiction over Respondents as a public utility was addressed (1996 Initial Decision), Andover began charging Rolling Hills \$3,000 per month. In that ruling, ALJ Sukovich addressed the issue of jurisdiction over Respondents and made a number of significant findings of fact and conclusions of law. She found that Respondents own, operate, manage and control the sewer plant and equipment in question and that the treatment plant is devoted to public use (Id. at 30). She also found that the plant is operated under privileges granted by a governmental agency (Id. at 30-31). She concluded that the Respondents are a public utility subject to the Board's jurisdiction and that they "have violated pertinent statutes by operating a public utility without submitting to Board jurisdiction" (Id. at 34, 37). She concluded that any rates charged by Respondents during the years in question "are illegal in the sense that they did not conform with the requirement that initial and ... amended tariffs be filed and petitions for approval of rates be submitted" (Id. at 35-36). ALJ Sukovich also concluded and ordered that the Respondents be required to immediately reduce rates charged to Rolling Hills to the level of \$3,000 monthly (Id. at 37). Furthermore, ALJ Sukovich ordered that Respondents file proof of a petition for municipal consent<sup>1</sup> and annual reports consistent with the Board's current practices (Id. at 37).

Following ALJ Sukovich's November 15, 1996 ruling, Respondents moved for interlocutory review. Interlocutory review was denied by Board Order dated January 30, 1997 (January 1997 Board Order). The Board indicated that it would have the opportunity to review the merits of the ALJ's decision when the completed initial decision was rendered (Id. at 5).

In addition to the OAL activity, from the late 1980's through the 1990's, Rolling Hills and Respondents settled several Superior Court lawsuits and agreed, in those Court proceedings, upon a monthly sewer rate of \$9,160 to be effective July 1, 1997, subject to Board approval. As a result of the Court settlement, Rolling Hills has been paying \$9,160 since July 1, 1997, pending Board action on its petition.

In the OAL proceeding, hearings on the reasonableness of the rates were held on October 13, 17 and 30, 2000. During the hearings, Respondents submitted evidence in support of a rate for Rolling Hills exceeding \$50 per unit per month (2T: 13-12). Based on the Superior Court settlement, however, Respondents proposed a rate of \$9,160 per month for Rolling Hills (i.e., \$35.50 per unit, per month) and stated that Respondents could provide safe, adequate and proper service at that rate. The Customers supported the \$9,160 rate.

---

<sup>1</sup> By letter dated March 31, 2000, a petition seeking approval of a municipal consent was filed with the Board. This docket is pending before the Board as Docket No. WE00040223.

Rolling Hills, the RPA, Subacute One, Subacute Two, Jeryl, Bondover, Jerry Turco, Board Staff, and Andover Utility Company, Inc. (AUC)<sup>2</sup> (collectively, Parties) entered into settlement discussions in an attempt to resolve the rate issues. The Parties believe that the \$9,160 rate to Rolling Hills is reasonable, subject to certain provisions and conditions outlined in a settlement document, which had been signed by all parties on May 18, 2001.

## STIPULATION

The stipulation provides the following:

- 1) The Parties agree to a monthly rate of \$9,160 or \$35.50 per unit subject to Board approval and effective on the date of the Board's Order (or such other date as the Board identifies) (settlement paragraphs 8 and 9a);
- 2) The Parties agree that the \$9,160 per month rate would be effective prospectively from the date the Board issues its final Decision and Order in this matter or by such other date as the Board may designate (settlement paragraph 6);
- 3) The Parties agree that the sewer utility (AUC) will not file a petition with the Board to increase rates further for one year from the date of the Board Order approving the rate contract. The effective date of any future rate increase would not be any sooner than two years after the date of the Board Order approving the rate contract (settlement paragraph 6); and
- 4) The Parties noted that: (a) in 1997, Respondents created AUC to provide sewer service to the Customers; (b) in 1999, the Township of Andover approved and issued a Municipal Consent to AUC; (c) in March 2000, AUC filed a petition with the Board seeking, among other things, approval of the Municipal Consent; (d) the municipal consent matter, assigned BPU Docket No. WE00040223, is currently pending before the Board; and (e) AUC does not presently own any of the assets constituting the sewer plant or possess any permits, including the New Jersey Pollutant Discharge Elimination System (NJPDES) permit (settlement paragraph 7).

The stipulation incorporates the following conditions in paragraph 9:

- a. The effective date of the \$35.50 per unit per month rate shall be the date of the Board's Order (or such other date as the Board identifies);
- b. Respondents shall transfer all of the assets constituting the sewer plant to AUC. If Respondents do not convey the land on which the utility plant is situated to AUC, then Respondents agree to lease the land to AUC for a nominal fee (e.g., \$1.00 per year) on a long-term basis (i.e., 99 years) with an option to renew on a long-term basis (i.e. 99 years) at a nominal fee (e.g., \$1.00 per year). Further, Respondents and AUC agree that the terms and conditions of the lease are subject to review by Board Staff and the RPA with final approval by the Board, and that all issues as to the ultimate rate treatment are to be addressed and decided in an appropriate subsequent proceeding before the Board;

---

<sup>2</sup> In 1997, Respondents created the Andover Utility Company, Inc. to provide sewer service to the Customers (settlement paragraph 7).

- c. Board approval of the stipulation will not affect or limit the authority of the Board, or of the State, in any future petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any other matter affecting the Respondents and/or AUC;
- d. Board approval of the Municipal Consent (filed under Docket No. WE00040223).
- e. Respondents and the Customers waive any and all claims arising from the OAL proceeding, including, but not limited to, the reasonableness of the past rates;
- f. AUC shall be the permittee on any and all permits required for the operation of the sewer plant, including the NJPDES permit;
- g. Respondents acknowledge that they have created a corporation, AUC, to own and operate the sewer plant and that Respondents and AUC shall comply with any and all requirements to effectuate the transfer of the ownership and operation of the sewer plant to AUC;
- h. AUC shall comply with all of the requirements governing public utilities set forth in N.J.S.A. 48:1-1 et seq. and N.J.A.C. 14:1-1 et seq., including, but not limited to, the issuance of indebtedness and the issuance of stock;
- i. Respondents and AUC shall have sixty (60) days from the effective date of the Board Order to meet the conditions set forth in the settlement; and
- j. Respondents and AUC agree that if the Board approves the stipulation, the Board may include a provision that a violation of the terms of the stipulation will constitute a violation of a Board Order, subjecting them to penalties as set forth at N.J.S.A. 48:2-42.

#### Initial Decision

On July 5, 2001, ALJ Sukovich issued an Initial Decision recommending approval of the stipulation.

#### DISCUSSION AND FINDINGS

The Board, having reviewed ALJ Sukovich's Initial Decision, and the stipulation, FINDS that the Parties have voluntarily agreed to the settlement and that the settlement fully disposes of all issues in controversy and is consistent with the law. The Board FINDS the settlement to be reasonable and in the public interest. The Board HEREBY ADOPTS the Initial Decision and the stipulation attached hereto as its own, incorporating by reference the terms and conditions as if fully set forth at length herein, subject to the following conditions:

- (a) The effective date of the \$35.50 per unit per month rate shall be the date of this Order;
- (b) Respondents shall transfer all of the assets constituting the sewer plant to AUC. If Respondents do not convey the land on which the utility plant is situated to AUC, then

Respondents shall lease the land to AUC for a nominal fee (e.g., \$1.00 per year) on a long-term basis (i.e., 99 years) with an option to renew on a long-term basis (i.e., 99 years) at a nominal fee (e.g., \$1.00 per year). Further, the terms and conditions of the lease are subject to review by Board Staff and the RPA with final approval by the Board. All issues as to the ultimate rate treatment shall be addressed and decided in an appropriate subsequent proceeding before the Board;

- (c) This Order shall not affect or limit the authority of the Board, or of the State, in any future petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any other matter affecting the Respondents and/or AUC;
- (d) Board approval of the Municipal Consent filed under Docket No. WE00040223.
- (e) Respondents and the Customers shall waive any and all claims arising from the OAL proceeding, including, but not limited to, the reasonableness of the past rates;
- (f) AUC shall be the permittee on any and all permits required for the operation of the sewer plant, including the NJPDES permit;
- (g) Respondents shall acknowledge that they have created a corporation, AUC, to own and operate the sewer plant and that Respondents and AUC shall comply with any and all requirements to effectuate the transfer of the ownership and operation of the sewer plant to AUC;
- (h) AUC shall comply with all of the requirements governing public utilities set forth in N.J.S.A. 48:1-1 et seq. and N.J.A.C. 14:1-1 et seq., including, but not limited to, the issuance of indebtedness and the issuance of stock; and
- (i) Respondents and AUC shall have sixty (60) days from the effective date of the Board Order to meet the conditions set forth in this Order.

The Board further specifically notices the Respondents and AUC that a violation of any term of the stipulation shall constitute a violation of a Board Order under N.J.S.A. 48:2-42.

With respect to the initial rates for Subacute One and Subacute Two, since these initial rates were not in dispute, the Board APPROVES the rates as initial rates. The initial rate for Subacute One shall be \$18,090 per month and the initial rate for Subacute Two shall be \$3,743 per month.

Petitioner is HEREBY ORDERED to submit the proposed contracts and tariff pages that conform to the terms and conditions of the stipulation and of this Order, including initial contract rates for Subacute One and Subacute Two, within sixty (60) days of the date of this Order. Rates shall be effective on and after the date of this Order. Respondents are further ORDERED to provide the Board with a certification as to compliance with all the conditions included in the Stipulation within sixty (60) days of the date of this Order.

DATED: **08/15/01**

BOARD OF PUBLIC UTILITIES  
BY:

**(SIGNED)**

CONNIE O. HUGHES  
ACTING PRESIDENT

**(SIGNED)**

FREDERICK F. BUTLER  
COMMISSIONER

**(SIGNED)**

CAROL J. MURPHY  
COMMISSIONER

ATTEST:

**(SIGNED)**

FRANCES L. SMITH  
SECRETARY

ROLLING HILLS CONDOMINIUM ASSOCIATION  
VS.  
ANDOVER NURSING HOME WASTEWATER TREATMENT PLANT  
DOCKET NO. WC94080364  
OAL DOCKET NO. PUC 9363-94N

SERVICE LIST

Raymond Murphy, Jr., Esq.  
20 North Van Burnt Street  
Englewood, NJ 07631

Eric Wertheim, Esq.  
Goldstein, Till & DePalma  
Two Gateway Center  
Newark, NJ 07102

Rick A. Garcia, Esq.  
1135 Clifton Avenue  
Clifton, NJ 07013

Badrhn M. Ubushin, Esq.  
Division of The Ratepayer Advocate  
31 Clinton Street – P.O. Box 46005  
Newark, NJ 07101

Michael P. Gallagher, Director  
David Gartenberg, Adm. Analyst II  
Dennis Moran, Bureau Chief  
Dante Mugrace, Supervisor  
Lauren Mattox, Adm. Assistant  
Board of Public Utilities  
Division of Water and Wastewater  
Two Gateway Center  
Newark, NJ 07102

Carla Bello, SDAG  
Caroline Vachier, DAG  
Dept. of Law and Public Safety  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07102

Walter W. Cota  
NJ Dept. of Taxation  
Public Utilities Tax Section  
50 Barrack Street  
P.O. Box 246  
Trenton, NJ 08625-0246

Nueva Elma, Bureau Chief  
Ken Warren, Engineer  
Board of Public Utilities  
Division of Service Evaluation  
Two Gateway Center  
Newark, NJ 07102